

SECTION 3.00

AWARD AND EXECUTION OF CONTRACT

3.01 Consideration of Proposals.

The Party of the First Part reserves the right to reject any and all bids, or any bid item, to advertise for new Proposals for the project, to waive technicalities, to waive informalities as to form, or to proceed to do the work otherwise, as may be deemed to be in the best interest of the Department.

Nothing herein shall be construed as depriving the Highway Commission of the right to reject any bid when such bid does not fully comply with the specifications for the project or the applicable public bidding law or regulations, or the Contractor is otherwise not eligible or responsible to receive award of the contract.

A proposal will be considered irregular and will be rejected if it is determined that any of the unit prices are materially unbalanced to the detriment of the Department. The bidder will be required to justify in writing the price or prices bid for the work in question before the Department decides to award the contract or reject the bid.

3.02 Award of Contract.

Subject to the reservations in Subsection 3.01, the Contract will be awarded to the lowest eligible and responsible Bidder.

It is anticipated that the Contract will be awarded within 30 days after the opening of bids, or, for projects requiring concurrence by the FHWA, or other Agencies, within 45 days after the opening of bids.

The successful bidder will be notified by mail or otherwise that the bid has been accepted and that the bidder has been awarded the Contract.

3.03 Retention of Proposal Guaranty.

The two lowest Bidders shall keep their bids open for at least 30 days after the opening of bids, or, for projects requiring concurrence by the FHWA, or other Agencies, for at least 45 days after the opening of bids. The Proposal guaranties of the two lowest Bidders will be retained until after execution of the Contract, prior to which, however, either Bidder may substitute a bid bond, cash or certified check (or cashier's or treasurer's check), all as described in Subsection 2.06, for the guaranty already deposited with the Supervisor of Fiscal Management of the Department. The Department will endeavor to return the Proposal guaranties of all Bidders other than the two lowest Bidders within three days after the opening of bids.

After the bid has been kept open for the required number of days the low Bidder may withdraw his/her bid and request the return of his/her proposal guaranty, in which case the guaranty of both the two lowest Bidders will be returned and the second lowest Bidder's Proposal shall not be considered for award. After the bid has been kept open for the required number of days the second lowest Bidder may withdraw his/her bid and request the return of his proposal guaranty, in which case only the proposal guaranty of the second lowest Bidder will be returned.

3.04 Contract Bonds Required.

A. A Performance Bond in the full amount of the Contract will be required by the Party of the First Part to ensure the faithful performance of the Contract, including Subsection 7.18.

B. A Payment Bond in an amount of the contract price will be required to be furnished by the Contractor to the Party of the First Part as security for payment by the Contractor and Subcontractors for labor, materials, rental equipment and for such other purposes as are more specifically set forth in General Laws, Chapter 149, Section 29 and Chapter 30, Section 39A and all amendments thereto.

The payment bond referred to in Chapter 149, Section 29 and Chapter 30, Section 39A is the sole security under said sections for payment by the Contractor and Subcontractor for labor performed or furnished and materials used or employed therein; said security to remain in force until the validity of all such claims shall be established and

finally determined and if determined and established as valid, all such claims shall be paid by the surety.

The Performance Bond and the Payment Bond shall be in a form satisfactory to the Party of the First Part, furnished by a surety company incorporated pursuant to Chapter 175, Section 105 of the General Laws or authorized to do business in the Commonwealth under Chapter 175, Section 106 of the General Laws and satisfactory to the awarding authority. The name of the agency or agent writing these bonds shall be identified with or on the bond.

All alterations, extensions of time, extra work and any other changes authorized under these specifications, or under any part of the Contract may be made without obtaining the consent of the surety or sureties on the contract bonds.

3.05 Execution of Contract.

The prepared Contract forms, bond forms and certificate of insurance forms will be sent with the notification of award to the successful Bidder who shall execute and deliver the Contract and furnish the required surety to the Department within 14 days after the date of the notice of award.

The Contract shall be in writing. When the Party of the First Part is the Commonwealth, the Contract shall be executed in duplicate, one of which duplicates shall be kept by the Department and one delivered to the Contractor. When the Party of the First Part is a municipality it shall be executed in triplicate, one of which triplicates shall be kept by the municipality, one delivered to the Department, and one delivered to the Contractor.

3.06 Failure to Execute Contract.

Should the successful bidder fail to execute the contract and furnish the bonds and certificate of insurance within the time stipulated, the Party of the First Part may, at its option, determine that the Bidder has abandoned the Contract and thereupon the Proposal and acceptance shall be null and void. In accordance with Massachusetts General Laws, Chapter 30, Section 39M, the guaranty accompanying the Proposal may be retained and collected by the Party of the First Part as liquidated damages for the delay and expense caused by the abandonment of the Contract.